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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,690	02/03/2005	Kazunori Saito	1560-0422PUS1	8523
2292 7590 04/10/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER SCHWARTZ, DARREN B				
ART UNIT 2435		PAPER NUMBER		
NOTIFICATION DATE 04/10/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/523,690

Applicant(s)

SAITO, KAZUNORI

Examiner

DARREN SCHWARTZ

Art Unit

2435

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2009 and 06 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1, 2, 4, 5, 7-11 are presented for examination.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 February 2009 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4, 5 and 7-11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai et al (JP 09-128264 A), hereinafter referred to as Sakai, in view of Hollander et al (U.S. Pat 6301699 B1), hereinafter referred to as Hollander. A translated copy of Sakai was provided in an earlier Office Action.

Re claims 1, 2, 4-7: Sakai teaches a data processing method including receiving input data containing a plurality of instruction codes, said method comprising:

retrieving an instruction code related to a branch instruction from the data (page 18, lines 12-17);

storing a branch origin address associated with the retrieved instruction code (page 13, lines 5-9; page 14, lines 15-20) and a branch destination address associated with a branch destination of the instruction code (page 8, fourth step; page 13, lines 5-9; page 14, lines 15-20);

judging whether or not an instruction code for calling an instruction code group for executing a predetermined process is associated with the branch destination address (page 26: ¶18; page 27, lines 8-15; page 29, lines 3-12);

storing a call destination address of the instruction code if the instruction code is associated with the branch destination address (page 3, lines 1-2; page 9, line 21 - page 10, line 5; page 17, lines 21-23; page 22, lines 8-16; page 25, lines 4-13; page 44, see register); and

judging whether or not the stored call destination address is between the branch origin address and the branch destination address (page 9, line 21 - page 10, line 5; page 17, lines 21-23; page 22, lines 8-16; page 25, lines 4-13);

Hollander teaches:

judging whether or not a process executed based on the instruction codes contained in the received data is a malicious process (Fig 4B, all elts: col 4, lines 62-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sakai with the teachings of Hollander, for the purpose of detecting hostile executable code. Both references are within the realm of the claimed invention as both references are directed to tracing the execution of computer code.

The Examiner holds that the branch origin address and branch destination address within a computer program need not have a specific order within a computer program. It is known in the art of computer programming, that function calls could precede the currently executed statement; such practice is common in code which has been obfuscated/scrambled and/or the initial point of execution is obscured as is commonplace in polymorphic and metamorphic code. Ergo, the examiner has interpreted the limitation "judging whether or not the stored call destination address is between the branch origin address and the branch destination address" to mean analyzing any code in an executable program.

The combination of Sakai and Hollander teaches concluding that the process executed based on the instruction codes contained in the data is a malicious process (Hollander: col 1, line 64 – col 2, line 3; Fig 4B, all elts: col 4, lines 62-65), when the instruction code for calling the instruction code group for executing the predetermined process is associated with the branch destination address and the call destination address of the instruction code is between the branch origin address and the branch destination address (Sakai: page 9, line 21 - page 10, line 5; page 17, lines 21-23; page 22, lines 8-16; page 25, lines 4-13).

Re claim 3: The combination of Sakai and Hollander teaches means for judging whether or not a predetermined character string is associated with a return address of the instruction code group, wherein if the character string is associated with the return address, the information indicating that the data is data for executing a malicious process is outputted (Sakai: pages 37 and 40: "CALL and RET instruction detecting parts;" page 42: "Branch origin/destination registers;" Hollander: Fig 4B, all elts).

Re claim 8: Sakai teaches a data processor comprising:

an input unit for inputting data containing a plurality of instruction codes (page 2, lines 1-2);

a storing unit for storing the data input by the input unit (page 2, lines 1-2); and a controller capable of performing operations (page 2, lines 1-2) of:

retrieving an instruction code related to a branch instruction from the data stored in the storing unit (page 18, lines 12-17);

storing a branch origin address associated with the retrieved instruction code (page 13, lines 5-9; page 14, lines 15-20) and a branch destination address associated with a branch destination of the instruction code in the storing unit (page 8, fourth step; page 13, lines 5-9; page 14, lines 15-20);

judging whether or not an instruction code for calling an instruction code group for executing a predetermined process is associated with the branch destination address (page 26: ¶18; page 27, lines 8-15; page 29, lines 3-12);

storing a call destination address of the instruction code in the storing unit if the instruction code is associated with the branch destination address (page 3, lines 1-2;

page 9, line 21 - page 10, line 5; page 17, lines 21-23; page 22, lines 8-16; page 25, lines 4-13; page 44, see register);

judging whether or not the stored call destination address is between the branch origin address and the branch destination address (page 9, line 21 - page 10, line 5; page 17, lines 21-23; page 22, lines 8-16; page 25, lines 4-13).

Hollander teaches:

concluding that the process executed based on the instruction codes contained in the data is a malicious process (Fig 4B, all elts: col 4, lines 62-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sakai with the teachings of Hollander, for the purpose of detecting hostile executable code. Both references are within the realm of the claimed invention as both references are directed to tracing the execution of computer code.

The Examiner holds that the branch origin address and branch destination address within a computer program need not have a specific order within a computer program. It is known in the art of computer programming, that function calls could precede the currently executed statement; such practice is common in code which has been obfuscated/scrambled and/or the initial point of execution is obscured as is commonplace in polymorphic and metamorphic code. Ergo, the examiner has interpreted the limitation "judging whether or not the stored call destination address is between the branch origin address and the branch destination address" to mean analyzing any code in an executable program.

The combination of Sakai and Hollander teaches the instruction code for calling the instruction code group for executing the predetermined process is associated with the branch destination address and the call destination address of the instruction code is between the branch origin address and the branch destination address (Sakai: page 9, line 21 - page 10, line 5; page 17, lines 21-23; page 22, lines 8-16; page 25, lines 4-13).

Re claim 9: Sakai teaches a data processor comprising:

an input unit for inputting data containing a plurality of instruction codes (page 2, lines 1-2);

a storing unit for storing the data input by the input unit (page 2, lines 1-2); and

a controller capable of performing operations (page 2, lines 1-2) of:

retrieving an instruction code for calling an instruction code group for executing a predetermined process from the data (page 18, lines 12-17).

Hollander teaches:

concluding that the process executed based on the instruction codes contained in the data is a malicious process (Fig 4B, all elts: col 4, lines 62-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sakai with the teachings of Hollander, for the purpose of detecting hostile executable code. Both references are within the realm of the claimed invention as both references are directed to tracing the execution of computer code.

The Examiner holds that the branch origin address and branch destination address within a computer program need not have a specific order within a computer program. It is known in the art of computer programming, that function calls could precede the currently executed statement; such practice is common in code which has been obfuscated/scrambled and/or the initial point of execution is obscured as is commonplace in polymorphic and metamorphic code. Ergo, the examiner has interpreted the limitation "judging whether or not the stored call destination address is between the branch origin address and the branch destination address" to mean analyzing any code in an executable program.

The combination of Sakai and Hollander teaches
judging whether or not a predetermined character string is associated with a return address of the instruction code group (Sakai: pages 42-43, elts: ST32 & ST35).
concluding that the process executed based on the instruction codes contained in the data is a malicious process when the instruction code for calling the instruction code group for executing the predetermined process is in the data and the predetermined character string is associated with the return address of the instruction code group (Hollander: Fig 3, all elts: col 4, lines 57-58; col 5, lines 12-16).

Re claim 10: Sakai teaches a data processor comprising:
an input unit for inputting data containing a plurality of instruction codes (page 2, lines 1-2);
a storing unit for storing the data input by the input unit (page 2, lines 1-2); and
a controller capable of performing operations (page 2, lines 1-2) of:

retrieving an instruction code for calling an instruction code group for executing a predetermined process from the data (page 26: ¶18; page 27, lines 8-15; page 29, lines 3-12);

judging whether or not an instruction code for obtaining a return address of the instruction code group is contained in the instruction code group if the instruction code is retrieved (page 6: eighth step; page 19: ¶13; page 41: ST2; page 44: 7).

Hollander teaches:

concluding that the process executed based on the instruction codes contained in the data is a malicious process (Fig 4B, all elts: col 4, lines 62-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sakai with the teachings of Hollander, for the purpose of detecting hostile executable code. Both references are within the realm of the claimed invention as both references are directed to tracing the execution of computer code.

The Examiner holds that the branch origin address and branch destination address within a computer program need not have a specific order within a computer program. It is known in the art of computer programming, that function calls could precede the currently executed statement; such practice is common in code which has been obfuscated/scrambled and/or the initial point of execution is obscured as is commonplace in polymorphic and metamorphic code. Ergo, the examiner has interpreted the limitation "judging whether or not the stored call destination address is

between the branch origin address and the branch destination address” to mean analyzing any code in an executable program.

The combination of Sakai and Hollander teaches when the instruction code for calling the instruction code group for executing the predetermined process is in the data and the instruction code for obtaining the return address of the instruction code group is contained in the instruction code group (Sakai: page 9, line 21 - page 10, line 5; page 17, lines 21-23; page 22, lines 8-16; page 25, lines 4-13).

Re claim 11: The combination of Sakai and Hollander teaches the malicious process causes an erroneous operation in the process executed based on the instruction codes contained in the received data (Hollander: Fig 4b, elt 106: col 4, lines 62-65).

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the text of the passage taught by the prior art or disclosed by the examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARREN SCHWARTZ whose telephone number is (571)270-3850. The examiner can normally be reached on 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571)272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. S./
Examiner, Art Unit 2435
/Kimyen Vu/
Supervisory Patent Examiner, Art Unit 2435